IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.309 OF 2007

Ramchandra Maryappa Lokhande ..Appellant.
Vs.
Smt. Akubai Laxman Lokhande ..Respondent.

Mr.S.G.Deshmukh, adv. for the Appellant.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 17, 2007.

P.C.:

1. Heard Mr.Deshmukh the learned counsel for the appellant, who is original defendant.

2. Admitted fact is that Laxman, husband of the plaintiff/respondent, is brother of the defendant/appellant. These two brothers have some agricultural land. Agricultural land was partitioned and Gat no. 270/1A came in possession of said Laxman. The said Laxman was missing since the year 1977-78. In an application no.448 of 1989, the plaintiff and her daughter were declared to be legal heirs of Laxman as he was missing for more than 17 years. According to the plaintiff there is a well situated in her share, however taking the benefit of absence of her husband, the defendant began to claim rights in respect of that well and also started forcibly taking water from the said well. She claimed declaration of ownership over

the said well and perpetual injunction restraining the defendant from taking water from the said well. The defendant contested the suit and claimed that he had constructed the well sometimes in the year 1966. He also contended that when the partition had taken place, property was divided without making appropriate measurements and there is a possibility that he might have constructed well on the land, which had gone to the share of his brother. After hearing the parties, the learned trial Court held that the plaintiff is exclusive owner of the disputed well, which is situated on her land. The learned trial Court also found that the defendant had failed to prove that he had dug and constructed the well in dispute. With these findings, the suit came to be decreed. The appeal preferred by the defendant also came to be dismissed. This is second appeal filed by the defendant.

3. Record reveals that the Court Commissioner was appointed and measurements of the land was taken. It was found that well is situated in the land of the plaintiff. Even if the defendant had constructed the well on the land of his brother by mistake, he does not become owner of that land or well. He has nowhere claimed adverse possession, because in his written statement filed in December, 1995 also he claimed that possibly by mistake he had constructed well on the land

of his brother. In view of the facts of the case and the concurrent findings of both the Courts below that the well is situated on the land of the plaintiff and she is exclusive owner of the same, I find no substantial question of law involved in the matter.

4. In the result, appeal stands dismissed.

[J.H.BHATIA, J.]